IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
December 16, 2008 Session

STATE OF TENNESSEE v. LINDA GREENE

Appeal from the Criminal Court for Hamblen County
No. 06CR679 John F. Dugger, Jr., Judge

No. E2008-00884-CCA-R3-CD - Filed September 22, 2009

The Defendant, Linda Greene, pled guilty to initiation of a process to result in the manufacture of methamphetamine, a Class B felony; possession with intent to sell or deliver a Schedule II controlled substance, a Class B felony; promoting manufacture of methamphetamine, a Class D felony; possession of a Schedule VI controlled substance, a Class E felony; possession of a Schedule III controlled substance, a Class A misdemeanor; and possession of drug paraphernalia, a Class A misdemeanor. The Defendant's plea agreement reserved a certified question of law regarding the legality of the warrantless search of her home and its curtilage. Upon consideration of the certified question, we hold that the trial court erred in denying the motion to suppress. The judgments are reversed and the case is remanded for dismissal.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Reversed; Case Remanded

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and NORMA MCGEE OGLE, JJ., joined.

Ben H. Houston, II, Knoxville, Tennessee, for the appellant, Linda Greene.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulaney, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; and Kevin D. Keeton, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At the hearing on the motion to suppress, Sergeant Chad Mullins of the Hamblen County Sheriff's Department testified that he was "clandestine lab certified, methamphetamine lab certified." He said the training involved instruction in proper clothing, avoiding contamination, and recovering and preserving substances from the lab for the Meth Task Force. He said he had been involved in detection of at least fifteen methamphetamine labs and that he was familiar with the distinct odor they generated. He said the danger associated with methamphetamine labs included the "wrong

mixture" of chemicals, which could damage a person's central nervous system, eyes, skin, lungs, and liver. He said there was also danger from explosion or fire.

Sergeant Mullins testified that he was working the night shift on December 12, 2006. He said that about 2:00 a.m., he received a call from Lieutenant Mark Snowden of the Morristown City Police Department because Lt. Snowden had noticed a strong odor of ether when driving by the Defendant's home. He said that at Lt. Snowden's request, he drove past the Defendant's home and that before he reached the front of the home, he could smell "a strong ether smell." He said that he had written in his paperwork that he went to the home at 2:28 a.m. He said that as a result of the ether smell, he called for other officers to come to the scene in order to do "a knock and talk to investigate the odor."

Sergeant Mullins testified that he pulled into a gravel driveway at the Defendant's home, which he described as extending to the back of the house. He identified a photograph of the home and marked the location to which he pulled his patrol car. He said the other officers pulled their cars in behind his. He said there was a privacy fence along the opposite side of the house from the driveway. He said that he and Lieutenant Braziel were standing at the back of the deck when he heard someone inside one of two outbuildings, which he said were behind the house with one in front of the other. He said that he heard someone inside the outbuilding farthest from the house. He said that he and Lt. Braziel approached the outbuilding from which he heard the noise. He said that he did not want to turn his back on whoever was inside. He said that they went to the door at the back of the building but did not knock and that the occupants of the building, whom he identified as the Defendant and "Mr. Hill," heard them and opened the door, at which point he could see a meth lab inside. He said that with his gun drawn, he ordered them out of the building. He said that for his and the other officers' safety, he ordered them onto the ground and handcuffed them. He said that he read them their Miranda rights immediately.

Sergeant Mullins testified that after advising the Defendant of her rights, he called out for the other officers. He said that he was present when Detective Stapleton obtained a written consent to search the home before it was searched. He said that no guns were drawn when the Defendant gave consent for the search and that she was standing and was not handcuffed. He acknowledged that she was in custody. He said that he did not have the form the Defendant signed. He said that there had been a previous consent search of the home two or three months earlier. He said the earlier search had been for a methamphetamine lab but that nothing was found. He said that he did not seek a warrant on this occasion because he knew the residents had given consent in the past for a search.

Sergeant Mullins testified that based upon the strong odor that he could smell from the roadway, he thought there was a danger to the individuals involved in the meth lab and to anyone inside the house. He said that there was another house a short distance away and a school nearby. He acknowledged, however, that he did not immediately call the fire department or the Meth Task Force. He said that the process of making methamphetamine can range from one hour to several hours and that there was no way for him to know at what point in the process the Defendant and Mr. Hill were. He said he was concerned about destruction of evidence.

Sergeant Mullins testified that four people were inside the home, other than the law enforcement officers, and that he had photographs of them but could not identify them by name. He said that the officers found numerous baggies of methamphetamine, marijuana, numerous pipes for smoking marijuana and methamphetamine, a blue pill, a white pill, two sets of digital scales, a pill crusher, $442 in cash, coffee filters, straws, and Brillo pads inside the home.

Detective David Stapleton of the Hamblen County Sheriff's Department testified that he was called to the Defendant's residence on December 12, 2006, around 3:00 a.m. He said that when he arrived, the Defendant was not handcuffed and that none of the law enforcement officers had their guns drawn. He said that after Officer Mullins told him that the Defendant had been read her Miranda rights, he read to her and obtained her signature on a consent to search form. He said he told the Defendant she was not required to sign the form. He said he put the form in Lt. Hayes's car but did not know what happened to it after that.

The Defendant called her husband, Randy Greene, to testify. He said that in the early morning hours of December 12, 2008, he was awakened by someone beating on the door. He said that when he opened the door, he saw police officers. He said that officers had been to the house before and that because he did not want them "coming in and rampaging the place," he asked whether they had a search warrant. He said that Sergeant Mullins told him to sit down and shut up and that they did not need a warrant. He said that the officers came inside, started going through the home, and got everyone out of bed. He said that the officers asked where the Defendant was, to which he replied that the last he had known, she was in bed. He said they stated that they were tracking her by her telephone.

Mr. Greene testified that he and defense counsel measured the distance from the privacy fence to the public road as thirty-five feet. He said the measurement from the privacy fence to the outbuilding was seventy-four feet. He did not specify in his testimony the outbuilding to which this measurement referred.

Mr. Greene testified that he and his wife were renters of the property. He said that their respective children also lived in the home.

Jeremy Spurling testified that he was the Defendant's son. He said that on the date at issue, he was awakened by a police officer. He said he was told to go to the living room and sit on the couch. He said that other officers came in and searched the house. He said that his stepfather asked Sergeant Mullins three or four times to see a search warrant and that the officer told his stepfather "to sit down and shut up." He said that Sergeant Mullins asked where his mother was and stated that they knew she was on the property. He said that the officers continued to ask about his mother's location for about two hours.

Lindsay Sellers testified that she was asleep at the Defendant's house in the early morning hours of December 12, when she was awakened by a police officer. She said that she was instructed to go into the living room and sit down, where she remained until about 9:00 a.m. She said that the officers questioned the people in the living room about the Defendant's whereabouts, of which she was unaware.

Shawnie Spurling testified that the Defendant was his mother and that he was asleep in her home on December 12, when he was awakened and told to sit on the living room couch. He said that the officers began searching the house, that his stepfather asked for a search warrant, and that the officers said they did not need a warrant. He said that after the officers left, they found a consent to search form in his mother's bedroom. He said that while the officers were there, they asked the occupants of the house for the Defendant's whereabouts and said they were tracing her cellular telephone and knew that she was on the property.

After receiving the evidence, the trial court found the following:

> That on December 12th, 2006, that Officer Mark Snowden, of the Morristown Police Department and he's also [an] officer with the Hamblen County Sheriff's Department, was working with the Morristown Police Department. He drove by the residence located at Sugar Hollow Road and smelled ether which is a component used to make Methamphetamine, and it was strong enough that he could smell this from the roadway.
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> He called Sergeant Chad Mullins of the Hamblen County Sheriff's Department who is a Sergeant and also a certified meth lab investigator. Sergeant Chad Mullins, within approximately five to ten minutes, arrived at the scene, and from the roadway, he could smell a strong odor of ether, which he knew that there was a meth lab by his experience that was in process and being operated.
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> [Sergeant] Mullins pulled his vehicle to the gravel area, which was next to a deck. He did not see anyone at the deck, and he heard someone at an outbuilding.
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> The officer approached the outbuilding for his own safety because he did not want, he testified, to have someone in behind him when he went to the residence.
>
> So as he approached the outbuilding, occupants of the outbuilding evidently heard Sergeant Mullins coming, and the door opened, and officers could see inside the building, and know that there was a meth lab there.
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> Further, officers handcuffed, and took the occupants down, which were Mr. Hill and Ms. Greene. They were handcuffed, and they were Mirandized at that time.
>
> Sometime later, Detective Stapleton arrived, David Stapleton, and asked if [the Defendant] had been Mirandized, and she stated she had. She was not handcuffed at this time. No guns [were] drawn.

She was read a consent to search form, and she was also advised that she did not have to sign the form. She chose to sign this consent to search form, and she was a lessee of the property, and that she had the ability to give consent to search the residence where she was leasing and lived at 797 South Sugar Hollow Road.

Pursuant to the consent to search, officers found green plant material, found paraphernalia in the residence, found suspected baggies of methamphetamine.

So the question comes, as the state argues, [were] there exigent circumstances.

This residence is approximately fifteen hundred feet from All Saint's Episcopal School, where this outbuilding was. This outbuilding is backed up to woods which are just basically wilderness woods, and then from the other side of the woods, All Saint's School is located.

Officers could smell the ether from the roadway. It was strong enough that they knew a meth lab was in process, and [Sergeant] Mullins testified that in his experience that there could have been [an] explosion, fire, and that anyone in that area was in danger to breathe the fumes of this process.

The Court finds that there [were] exigent circumstances. This officer basically for his own safety approached this outbuilding, and the door was pushed open by the defendants, and he could see inside and see the meth lab involved.

As far as the consent to search, the Court finds that the consent was voluntarily, knowingly, and intelligently made, and freely given by Ms. Greene. She signed that consent, and even her son testified that he saw the consent form and it had been signed by his mother and had seen a copy of it.

Detectives have lost the copy of this particular consent to search form, but Attorney Ben Houston believes that he has a copy of it.

Further, the consent does not have to be in writing or signed. A consent can be orally given, which is as valid as a written consent waiver.

> So the Court finds that this consent was voluntarily, intelligently, and knowingly given, and that the Court overrules this motion to suppress.

Following the trial court's denial of the motion to suppress, the defendant entered her guilty pleas subject to reserving the following certified question of law:

> Whether the warrantless intrusion onto the curtilage of the Defendant's home located at 797 South Sugar Hollow Road by several officers employed by the Hamblen County Sheriff's Department and the subsequent search of the Defendant's outbuilding and home immediately following said intrusion was justified by exigent circumstances as required by the Fourth Amendment of the United States Constitution and Article 1 § 7 of the Tennessee Constitution.

See generally Tenn. R. Crim. P. 37(b)(2) (conditional guilty plea and reservation of certified question of law).

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 7 of the Tennessee Constitution provides:

> That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty.

The essence of these constitutional protections is "to 'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997) (quoting Camara v. Municipal Court, 387 U.S. 523, 528 (1967)). Because an individual's expectation of privacy is nowhere higher than when in his or her own home, a "basic principle of Fourth Amendment law" is "that searches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573, 586 (1980) (internal quotations omitted). Under the "fruit of the poisonous tree" doctrine, evidence that is obtained through exploitation of an unlawful search or seizure must be suppressed. See Wong Sun v. United States, 371 U.S. 471, 488 (1963).

The prohibition against warrantless searches and seizures is subject only to a few specifically established and well-defined exceptions. See Katz v. United States, 389 U.S. 347, 357 (1967); State v. Tyler, 598 S.W.2d 798, 801 (Tenn. Crim. App. 1980). Holding that the constitution prohibits the warrantless entry into a suspect's home to make a felony arrest, the United States Supreme Court has stated that "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." Payton, 445 U.S. at 590. "Exigent circumstances are those in which the urgent need for immediate action becomes too compelling to impose upon governmental actors the attendant delay that accompanies obtaining a warrant." State v. Meeks, 262 S.W.3d 710, 723 (Tenn. 2008). Such situations include "(1) when the officers [are] in hot pursuit of a fleeing suspect; (2) when the suspect represent[s] an immediate threat to the arresting officers or the public; and (3) when immediate police action [is] necessary to prevent the destruction of vital evidence or thwart the escape of known criminals." Jones v. Lewis, 874 F.2d 1125, 1130 (6th Cir. 1989)). In addition, "law enforcement officers may also make a warrantless entry in an emergency to protect human life." State v. Robbie W. Fields, No. E2004-00716-CCA-R3-CD, Bradley County, slip op. at 6 (Tenn. Crim. App. Jan. 7, 2005). Our supreme court has said,"[T]he curtilage [of residential property] is entitled to the same constitutional protection against ground entry and seizure as the home." State v. Prier, 725 S.W.2d 667, 671 (Tenn. 1987).

On review, a trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Jones, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Odom, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

In the present case, the Defendant argues that there were no exigent circumstances to permit the officers' warrantless intrusion into the curtilage of her home. The State argues that the intrusion was permitted because the officers had probable cause to believe a crime was being committed based upon the officers' observation of the smell of ether and the active operation of a methamphetamine lab provided exigent circumstances for a warrantless entry.

The State's evidence accredited by the trial court was that Sergeant Mullins, a certified methamphetamine lab investigator, smelled a strong odor of ether indicating an active methamphetamine lab. He testified that in order to investigate further, he went onto the property to do a "knock and talk," parking his car in a gravel driveway beside the house, where there was a deck and a door to the residence. This court has approved "knock and talk" investigations on the basis that a person has no reasonable expectation of privacy in a pathway or sidewalk leading to the front door of a home. State v. Cothran, 115 S.W.3d 513 (Tenn. Crim. App. 2003). Although Sergeant Mullins was at the side, not the front, of the defendant's home, the photographs in the record reflect that the primary access to the home from the roadway was by using the side driveway and parking in the gravel area as Sergeant Mullins did. The photographs also reflect that there was no shoulder on the roadway where Sergeant Mullins could have parked in order to access the front door more

directly. Standing in the gravel area, he heard a noise in the outbuilding. Because he was concerned for his safety in turning away from the outbuilding in order to approach the residence, he and Lt. Braziel went to the building. The occupants opened the door before the officers knocked, revealing an active methamphetamine lab in plain view. See State v. Hurley, 876 S.W.2d 57, 67 (Tenn. 1993) ("Authorities may take note of anything evident to their senses so long as they have a right to be where they are and do not resort to extraordinary means to make the observation.").

The question becomes whether the officers had the right to veer from their approach for a knock-and-talk encounter and go instead to the outbuilding. This court has recognized that police who are on a defendant's property for a legitimate purpose may be within the same areas of the property as are open to the general public. State v. Siliski, 238 S.W.3d 338, 368 (Tenn. Crim. App. 2007). The photographs before the trial court demonstrated that the outbuilding was close to the residence, within the cleared yard area and not the surrounding wooded area. However, in order to reach it, Sergeant Mullins and Lt. Braziel had to leave the driveway, walk across the back yard, and pass the first outbuilding before reaching the second, smaller outbuilding where the methamphetamine lab was located. The evidence reflects that this second outbuilding was obscured from view from the road by a privacy fence and was further obscured by vegetation and the other outbuilding. We hold that the officers went beyond the bounds of the areas that were open to the general public.

At the point the officers abandoned the direct route to a knock and talk encounter, the necessity of probable cause and exigent circumstances arose. An examination of recent supreme court cases is helpful in determining whether this intrusion was lawful.

In State v. Meeks, 262 S.W.3d 710 (Tenn. 2008), the authorities received a complaint from a motel guest of a strange odor. An officer went to the motel and determined that the odor was coming from the defendant's room and was associated with the manufacture of methamphetamine. Officers went to the room from which the smell was coming and knocked but received no answer. They noticed that the intensity of the odor increased as they knocked on the flimsy door, and they heard a voice and breaking glass inside the room. The officers agreed that they should enter the room to protect the safety of the people inside the room and other people in the vicinity of the room. They attempted to open the door with a key they obtained from the motel manager, but a chain held the door partially closed, and they then kicked the door open. The officers removed two people from the room, one of whom was unconscious and both of whom required hospitalization. They obtained a search warrant based upon information they gained from the warrantless entry. The supreme court held that the officers' warrantless entry into the room was not an unreasonable search.

In State v. Carter, 160 S.W.3d 526 (Tenn. 2005), the authorities received an anonymous tip that methamphetamine was being manufactured at the defendants' home. Upon arriving, officers smelled anhydrous ammonia and ether. An officer saw someone looking out a window of the house, and as the officers approached the home, they heard running inside. The officers knocked and announced themselves and entered the front and rear doors. They asked the occupants about the odor and requested permission to search the home, but the occupants denied that the odor was coming from the house and declined to allow the search. The officers detained but did not arrest the

occupants and applied for and received a search warrant based upon their information and observations before entering the home. Evidence found in the subsequent search resulted in drug charges against the defendants. The defendants filed a motion to suppress the evidence obtained during the search on the basis that the officers had no exigent circumstances to justify the warrantless entry into their home. The Tennessee Supreme Court held that the entry and detention were illegal. It held that the officers could not rely upon exigent circumstances that they themselves created when they drove up and alerted the occupants of the home to their presence. However, the court held that the search warrant was not tainted because it did not rely on facts gathered as a result of the illegal conduct.

The State argues that the odor of a controlled substance may in some circumstances be sufficient to support a finding of probable cause. We note, however, that three of the cases cited by the State involved warrantless vehicle searches. See State v. Hughes, 544 S.W.2d 99, 101-02 (Tenn. 1976) (holding that officer had probable cause to search car based upon smell of marijuana); see Hart v. State, 568 S.W.2d 295 (Tenn. Crim. App. 1978) (holding that probable cause existed to search car that was stopped after high-speed travel after officer smelled marijuana); Hicks v. State, 534 S.W.2d 872 (Tenn. Crim. App. 1975) (holding that officer who stopped defendant for traffic offense had probable cause to search van after smelling marijuana). Two other cases cited by the State involved home searches based upon a distinctive smell associated with a controlled substance in conjunction with other indicia of illegal activity. See State v. Bradley Lonsinger, No. M2003-02574-CCA-CD, Warren County (Tenn. Crim. App. Jan. 5, 2005) (holding that search warrant was based upon probable cause where it was based upon distinctive odor associated with methamphetamine manufacture and suspicious behavior inside home when officers arrived to arrest Defendant on an outstanding warrant); State v. Paul Anthony Wright, No. W2001-02574-CCA-R3-CD, Obion County (Tenn. Crim. App. Apr. 7, 2003) (upholding validity of search warrant issued on basis of chemical smell associated with methamphetamine manufacture and plastic bottles and chemical residue observed in the Defendant's truck parked on the street and items in an open field behind the house). The final case cited by the State is inapt because there was no appellate issue involving the validity of the search warrant. See State v. Danny Davidson, No. W2001-00118-CCA-R3-CD, Weakley County (Tenn. Crim. App. Feb. 26, 2002), app. denied, (Tenn. July 8, 2002).

Thus, we are guided by our supreme court's recent decisions Meeks and Carter. In both of those cases the intrusion was into a defendant's home, and in neither case was the odor associated with methamphetamine manufacture the only evidence to support a finding of probable cause. In the present case, the only proof the State presented was that the officers smelled ether and that they heard a noise in the outbuilding. There was no evidence that the noise was suspicious, only that it caused Sergeant Mullins to realize someone was inside and that he did not want to turn his back with someone in the shed. We hold that the State's proof was not sufficient to establish probable cause for the officers to have left their course from the knock and talk and go to the place where they observed the methamphetamine lab in plain view. It follows that absent probable cause, there were no exigent circumstances to permit the warrantless entry into the curtilage, and the officers' entry into the curtilage violated the defendant's constitutional rights under the Fourth Amendment and article I, section 7. Cf. U.S. v. Daughenbaugh, 150 F.3d 594 (6th Cir. 1998) (holding that authorities

conducted an illegal search by going into civil rights plaintiff's back yard and looking into an unattached garage that was behind house, set back from the road, and not visible from street).

Our conclusion that the warrantless search was improper because it lacked probable cause and exigent circumstances does not, however, end the inquiry in this case. The United States Supreme Court has said that illegally seized evidence is not "'fruit of the poisonous tree' simply because [the evidence] would not have come to light but for the illegal actions of the police." Wong Sun, 371 U.S. at 487-88. In the present case, the State presented proof that the Defendant gave written consent for the officers to search the premises. Thus, the question turns to the validity of that consent notwithstanding the officers' illegal activity.

Evidence which has been seized after illegal police conduct is admissible if its seizure is sufficiently attenuated from the earlier illegal police activity. State v. Garcia, 123 S.W.3d 335, 345 (Tenn. 2003). "'A consent to search that is preceded by an illegal seizure is not 'fruit of the poisonous tree' if the consent is both: 1) voluntary, and 2) not an exploitation of the prior illegality.'" Id. at 346 (quoting Wayne LaFave, 3 Search and Seizure § 8.2(d) at 656 (3d ed. 1996)). Our supreme court has said that the following factors are relevant in making the factual determination whether the taint of an illegal seizure was sufficiently attenuated from a subsequent consent: "1) the temporal proximity of the illegal seizure and consent; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct." Garcia, 123 S.W.3d at 346 (stating the standard of Brown v. Illinois, 422 U.S. 590, 604 (1975)). The State bears the burden of showing attenuation. Garcia, 123 S.W.3d at 346.

We consider first the temporal proximity of the Fourth Amendment violation to the Defendant's consent. The State's proof, which was accredited by the trial court, was that the Defendant was ordered at gunpoint onto the ground and handcuffed. She was read her rights. At some point, the handcuffs were removed. Sergeant Mullins acknowledged that the Defendant was in custody at the time she gave the consent to search. Sergeant Mullins' report states that he smelled the strong odor around 2:28 a.m. and went onto the Defendant's property to investigate. He listed the time of the crime as 2:30 a.m. Detective Stapleton testified that he was called to the scene around 3:00 a.m. and that when he arrived, the Defendant was not in handcuffs. After he determined that she had already been advised of her Miranda rights, he spoke with her about signing a consent to search form and obtained her signature. A short period of time passed between the initial illegal activity and the Defendant's consent for the search, and the Defendant was in custody. This factor weighs in favor of suppression.

The second factor is the presence of intervening circumstances. Although the Defendant was initially detained at gunpoint, made to get on the ground, and handcuffed, she was then allowed to get up and the handcuffs were removed. She was advised of her Miranda rights. She was also advised that she did not have to consent to a search. However, the time involved was brief, and the Defendant remained in custody. This factor also weighs in favor of suppression.

The final factor is the purpose and flagrancy of the official misconduct. There is no evidence that the officers in this case were attempting to circumvent the Defendant's Fourth Amendment

rights in conducting official police activity, rather than mistaking whether their actions were constitutionally permissible. This factor weighs against suppression.

Considering all of these factors, we conclude that the Defendant's consent for the search was not sufficiently attenuated from the illegal police conduct for it to be considered voluntary and not an exploitation of the Fourth Amendment violation. Thus, the trial court erred in ruling that the evidence obtained as a result of the search was admissible.

In consideration of the foregoing and the record as a whole, the judgments of the trial court are reversed. The Defendant's guilty pleas are vacated, and the case is remanded to the trial court for further proceedings consistent with this opinion.

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JOSEPH M. TIPTON, PRESIDING JUDGE